IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16630 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAKBHAI ANANTRAI BHATT

Versus

GSRTC

Appearance:

1. Special Civil Application No. 16630 of 2003

MR TR MISHRA for Petitioner No. 1

MR DIPEN A DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/07/2004

ORAL JUDGEMENT

Rule. Learned advocate Mr.Dipen Desai appears for the respondent and waives service of notice of rule. Both the learned advocates jointly request to take up the

petition for final disposal forthwith.

2. The short facts leading to the present petition are that the petitioner was working as Clerk with the respondent Gujarat State Road Transport Corporation ('Corporation' for short) since 1980. It appears that the petitioner had developed cataract and he was referred to Guru Govindsingh Hospital for a check up. It appears that on the basis of the certificate issued by the said hospital, the respondent Corporation by the order dated 13.3.2003 terminated the services of the petitioner on the ground that the petitioner is declared unfit on account of defect in his eyes. It is this order of termination dated 13.3.2003 that the petitioner has challenged in the present petition.

3. It is the case of the petitioner that the petitioner was never completely handicapped in discharge of his duties and that the medical certificate was not valid. The petitioner states that he had never lost his vision totally. The petitioner has further stated in the petition that he had taken treatment in a private hospital, i.e. Aashirvad Eye Hospital at Jamnagar and the said hospital has issued certificate dated 14.10.03 in which it is certified that the petitioner is operated for both eyes for cataract and after operation his visual capacity is good enough for writing and reading work.

4. The petitioner has challenged the order of termination on various grounds including the ground that the same is in violation of the provisions of section 25-F of the Industrial Disputes Act. The petitioner has also contended that he had also got a certificate from Guru Govindsingh Hospital on 29.8.2003 in which it is stated that at the relevant time he has no complaints. The petitioner, therefore, submits that the earlier certificate of the very same hospital ought not to have been relied upon by the respondent for terminating the services of the petitioner.

5. On behalf of the respondent Shri Dipen Desai has submitted before me that as per the certificate obtained by the respondent at the relevant time, the petitioner had lost both eye sights and that he has, therefore, not been able to discharge any duties as an accountant and the respondent therefore, correctly declared him unfit for duty and terminated his services by the order dated 13.3.2003. In the affidavit in reply, the respondent has also stated that due to the impairment of vision, the petitioner had also committed many mistakes which also prompted the respondent to terminated his services.

6. Having considered the submissions made on behalf of the parties, I am of the opinion that the action of the respondent in terminating the services of the petitioner was illegal, unlawful and unjust. It is not in dispute that the petitioner had discharged his duties from 1980 to 2003. It is also now not in dispute that the petitioner is able to see properly and would be in a position to discharge his normal duties. It is, however, open for the respondent to take lighter or other work if the respondent so find it necessary. Admittedly, the petitioner had put in 23 years of unblemished service and therefore, would it be open for the respondent to summarily terminate the services after such a long period, is the question to be decided in the present petition. I am of the opinion that the respondent has completely overlooked the provisions of the the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 ('the said Act' for short). Section 2(k) of the said Act defines establishment and reads as under:

"2(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or any authority ora body owned or controlled or aided by the Government or a local authority or a Government Company as defined in section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government."

Section 47 of the said Act provides that no establishment shall dispense with or reduce in rank an employee who acquires a disability during his service. Section 47 of the said Act reads as under:

"47. Non-discrimination in Government employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

A plain reading of the said provisions makes it clear that the respondent Corporation is an establishment within the meaning of section 2(k) of the said Act. In that view of the matter, the respondent is bound by the provisions of section 47 of the said Act which in clear terms states that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. It is further provided that if an employee after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. It is also provided that if it is not possible to adjust the employee against any post, he may be kept on a supernumarary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. In view of this clear and unambiguous language of the said Act, I am of the opinion that the respondent was not justified in brining about the termination of employment of the petitioner since the employee was protected under section 47 of the said Act.

7. In a recent decision of the Hon'ble Supreme Court reported in AIR 2003 SC 1623 (Kunal Singh v. Union of India) the Hon'ble Supreme Court has held that an employee who acquires disability during his service is required to be protected under section 47 of the said Act and it is observed that such an employee acquiring disability if not protected would not only suffer himself, but possibly all those who depend on him would also suffer. It is further observed that the very frame and contents of section 47 clearly indicate its mandatory nature. It contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. It is further observed that in construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act.

8. In view of the above observations of the Hon'ble Supreme Court as well as the provisions of the said Act, I am of the opinion that the respondent has gravely erred in law in bringing about the termination of the employment of the petitioner by the impugned order dated 13.3.2003 and therefore the same is hereby quashed and set aside. The petitioner is directed to be reinstated in service with continuity, however with 50 per cent backwages as the petitioner himself has filed the petition in November 2003. The reinstatement will be carried out within a period of two weeks from today. Rule is made absolute to the above extent with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)
(vjn)